Supreme Court, U.S.
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No. 04-1609

In The

SUPREME COURT OF THE UNITED STATES

COUNTY OF SACRAMENTO and LOU BLANAS, Sheriff,
Petitioners,

vs.

OSCAR W. JONES,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under California's doctrine of equitable tolling, is a sexually violent predator entitled to avoid the statute of limitations applicable to his civil rights action (which challenges the terms of his civil detainment while awaiting a civil trial on his status as a sexually violent predator), when the record undisputedly shows that he did not suffer any inability (but enjoyed an enhanced capacity) to contact attorneys or avail himself of judicial processes?

LIST OF PARTIES

1) OSCAR W. JONES, Plaintiff and Respondent;

2) COUNTY OF SACRAMENTO, Defendant and Petitioner;

3) LOU BLANAS, Sheriff, Defendant and Petitioner.

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OPINIONS BELOW

The unpublished order of the U.S. Court of Appeals for the Ninth Circuit denying rehearing and rehearing en banc in this matter, filed on February 24, 2005, is reprinted in the Appendix filed herewith, p. 1a. The published opinion of the U.S. Court of Appeals for the Ninth Circuit, filed on December 27, 2004, is reported at Jones v. Blanas, 393 F.3d 918, and is reprinted in the Appendix filed herewith, pp. 2a-28a. The unpublished order of the U.S. District Court for the Eastern District of California, adopting the findings and recommendations of U.S. Magistrate Judge John F. Moulds, filed on September 27, 2002, is reprinted in the Appendix filed herewith, pp. 27a-28a. The unpublished findings and recommendations of U.S. Magistrate Judge John F. Moulds, filed on August 16, 2002, is reprinted in the Appendix filed herewith ("App."), pp. 29a-44a.

JURISDICTION

On December 27, 2004, the U.S. Court of Appeals filed its published opinion in this matter. 393 F.3d 918, App. at p. 2a. Subsequently, on February 24, 2005, the U.S. Court of Appeals for the Ninth Circuit filed an order denying Petitioners' Petition for Panel Rehearing and for Rehearing En Banc. App. at p. 1a. Thus, the jurisdiction of this Court to review the judgment of the U.S. Court of Appeals for the Ninth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES AT ISSUE

The California Welfare and Institutions Code

In cases where an inmate's parole or temporary parole hold pursuant to Section 6601.3 will expire before a probable cause hearing is conduced pursuant to Section 6602, the agency bringing the petition may request an urgency review pursuant to this section. Upon that request, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be ***detained in a secure facility*** until a hearing can be completed pursuant to Section 6602.... CAL. WELF. & INST. CODE § 6601.5 (West 1998) (emphasis added).

A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent, predatory criminal behavior upon his/her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. If the judge determines that there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person ***remain in custody in a secure facility*** until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his/her release from the jurisdiction from the ***Department of Corrections or other secure facility***. CAL. WELF. & INST. CODE § 6602 (West 1998) (emphasis added).

No person may be placed in a state hospital pursuant to the provisions of this article ***until there has been a determination*** pursuant to Section 6601.3 or 6602 that there is probable cause to believe ***that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior***. . . . CAL. WELF. & INST. CODE § 6602.5 (West 1998) (emphasis added).

A ***person subject to this article shall be entitled to*** a trial by jury, to ***the assistance of counsel***, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. ***In the case of a person who is indigent, the court shall appoint counsel to assist him*** or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. CAL. WELF. & INST. CODE § 6603(a) (West 1998) (emphasis added).

STATEMENT OF THE CASE

The factual-background section of this statement of the case is quoted directly (with two alterations in italicized brackets) from the published opinion of the U.S. Court of Appeals for the Ninth Circuit in this matter, 393 F.3d at 923-25, App. at pp. 3a-8a.

A. Factual Background

In June 1997, Jones was incarcerated at the Susanville State Prison for a parole violation. On December 3, 1997, shortly before the conclusion of Jones's six-month sentence, he was transferred to the Sacramento County Jail to await a hearing on a petition for commitment as a sexually violent predator; the following day, the court ordered Jones detained at that facility under the *[*Sexually Violent Predator Act ("SVPA")*]*. Although the SVPA requires a probable cause hearing within 55 days, *see* CAL. WELF. & INST. CODE §§ 6601.3, 6601.5, it was not until September 16, 1998, that the state superior court found probable cause to continue to hold Jones for SVPA commitment proceedings. On December 13, 1999, at the conclusion of Jones's trial by jury, he was found to be a sexually violent predator. Jones was committed to Atascadero State Hospital on January 4, 2000.

In total, Jones was incarcerated at the Sacramento County Jail from December 3, 1997, to January 4, 2000, a period of over two years. For roughly the first year of his time at the County Jail -- from December 3, 1997, to December 9, 1998 -- Jones was housed with the general criminal population of the Jail. For Jones's remaining time at the Sacramento County Jail -- from December 9, 1998, to January 4, 2000 -- he was housed in an administrative segregation unit known as "T-Sep." According to the declaration of a sheriff's deputy, this is not a disciplinary housing unit. However, in T-Sep Jones was subject to far more restrictive conditions than those afforded to the general jail population. Jones's recreational activities were completely taken away, and he was allowed only one hour of exercise every other day. Phone calls and visiting privileges were considerably more limited in T-Sep.

The time Jones was allowed out of his cell was reduced more than tenfold. Jones was denied access to religious services. Jones's law library access was considerably curtailed: while in T-Sep, Jones was denied physical access to the law library; he could request, by citation only, copies of cases no more than twenty pages long.

Throughout his time at the Sacramento County Jail, Jones was subjected to numerous strip searches, some of which were conducted outdoors, and many of which were conducted at gunpoint in the middle of the night and accompanied by various intimidating tactics including poking with large weapons. On at least three occasions, Jones was led to the outside recreation area; forced at gunpoint to remove all clothing within the sight of many deputies (including female deputies); forced to lift his penis and testicles for inspection, run his fingers through his hair, then run his fingers inside his mouth; and forced to bend over, spread his buttocks apart with his hands, and cough three times.

On December 29, 2000, Jones brought this 42 U.S.C. § 1983 action against Sheriff Lou Blanas and the County of Sacramento for damages based on violations of his constitutional rights during the twenty-five-month period he was confined awaiting adjudication and eventually commitment under the SVPA.[1] On appeal, Jones claims that Blanas and the County violated his rights to free exercise of religion, access to the courts, freedom from unreasonable searches, and substantive due process as to conditions of confinement. Jones also claims that the district court abused its discretion in preventing adequate discovery.

On July 6, 2001, the magistrate judge ordered a four-month discovery period, with written discovery requests due sixty days before the end of the discovery period. Some of Jones's discovery requests were timely; some were filed several weeks after the deadline. On

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[1] Jones included several other officials as defendants; the magistrate judge refused service on these defendants because Jones had not stated a claim against them upon which relief could be granted. Jones does not challenge these dismissals here.

October 24, 2001, Jones moved the court for a thirty-day extension of discovery, because mail service had been discontinued at Atascadero due to the events of September 11, 2001, and because of disagreements with the defendants over discovery. Stating that Jones had failed to show good cause for an extension, the court denied the motion.

Blanas and the County soon thereafter moved for summary judgment. Jones responded first with a cross-motion for summary judgment, and then with a motion to stay defendant's summary judgment pursuant to Federal Rule of Civil Procedure 56(f). Jones also moved to compel responses to his discovery requests; the court once again found no good cause to extend discovery and denied Jones's motion.

The magistrate judge then denied Jones's Rule 56(f) motion and issued Findings and Recommendations (which the district court judge later adopted in full as his opinion). One of the magistrate judge's recommendations was that the court grant summary judgment to defendants on Jones's free exercise claim, because Jones had not explained how his inability to participate in religious services inhibited his practice of religion. In Jones's Objections to the Findings, he attempted to expand his record by including a statement discussing the importance of religious services to his Christian faith.

A week after Jones filed his Objections, the district court adopted the Findings in full, granted summary judgment to the defendants, and denied summary judgment to Jones. The court first applied California's one-year statute of limitations for personal injury claims and found all claims accruing prior to December 29, 1999, to be time-barred. Though the court denied Eleventh Amendment immunity to Blanas and determined that the County could be subject to liability for Blanas's actions under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978), the court found that defendants were entitled to summary judgment as to all of Jones's claims. On Jones's free exercise claim, the court found that Jones "had not explained how a general denial of access to religious services . . . denied him his ability to practice his own religion (assuming of course

that plaintiff is religious)." On Jones's access to the courts claim, the court found that Jones "failed to present any evidence indicating that he had been injured in any way by his inability to participate in 'law library activities,' as he must do pursuant to *Lewis v. Casey*," 518 U.S. 343, 351, 135 L. Ed. 2d 606, 116 S. Ct. 2174 (1996). On Jones's unreasonable search claim, the court found that Jones "had not presented anything indicating defendant Blanas was involved in the search in any way, nor that the search was conducted pursuant to a policy adopted by the County." Finally, as to Jones's due process claim, the court found that none of Jones's conditions of confinement rose to the level of a constitutional violation. Specifically, the court concluded that Jones had not established a right to any particular amount of recreation, exercise, or fresh air and sunlight, or identified any condition "objectively serious enough to implicate plaintiff's constitutional rights."[2] Pursuant to the district court's opinion, summary judgment was entered for defendants on September 27, 2002.

The timeliness of the appeal is contested. Jones's notice of appeal was dated October 24, 2002, and he attested in writing that he deposited it in the Atascadero State Hospital mail system on that date, with postage prepaid. The district court docketed the notice of appeal on October 29, 2002.

B. Outcome at the Ninth Circuit

In a published opinion, the U.S. Circuit Court of Appeals for the Ninth Circuit held that Jones' notice of appeal was timely, 393 F.3d at 926-27, App. at pp. 9a-10a, and reversed the summary judgment that had been entered by the district court. 393 F. 3d at 936, App. at pp. 25a-26a. In so doing, the Ninth Circuit held that the Jones had failed to present any evidence that would support his claim that he had been denied access to the courts. 393 F. 3d at 936, App. at pp. 25a-26a. Despite that, and regardless of the undisputed fact that Jones had unlimited access to his attorneys while at the Sacramento County Jail,

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[2] The court also granted summary judgment on Jones's remaining claims, which /were not/ raised in this appeal.

and notwithstanding the reality that he had enhanced access to civil courts during that time, the Court of Appeals surmised Jones's claims were not untimely under California's doctrine of equitable tolling. 393 F.3d at 927-29, App. at pp. 10a-15a.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Answering the question presented by this Petition in the affirmative, as the Ninth Circuit did in its published opinion, will encourage rapists and child sex abusers to strain judicial and public resources – precious assets that are better allocated toward keeping such potential recidivists away from their conceivable victims. Sex offenders will be able to tax judicial economy and syphon public treasuries by withholding any challenge to the terms of their civil confinement in a local jail while their status is being adjudicated in state court. Indeed, since their status would remain that of civil detainees after they are committed to a state hospital, the Ninth Circuit's opinion will enable these depraved individuals to toll the limitations period for the entire and indefinite period of their commitment.

Consequently, sexually violent predators like OSCAR W. JONES – who enjoy enhanced access to attorneys and the courts while they are detained in local jails – will wait until evidence that is unfavorable to their claims against sheriffs and counties becomes stale before contesting the conditions of their detention in the local jails. Once the stagnation of evidence has placed local governments at a disadvantage in defending against such claims, these sex offenders will file an action in a federal district court challenging the terms of their distant confinement under 42 U.S.C. § 1983. In that vein, sexually violent predators will become fixated on filing their actions in federal courts in California because state courts will not be bound by the panel's opinion on a question of state law.

The Ninth Circuit's opinion did not give due weight to such practical consequences. Moreover, the Court of Appeals overlooked undisputed facts in the record that were cited by Appellees demonstrating that JONES did not suffer an inability to contact or retain

counsel, or to avail himself of judicial processes while he was detained. Thus, Petitioners now seek review by this Court for two reasons: First, to prevent sexually violent predators like JONES from improperly taxing the federal judiciary; and second, to keep such sex offenders from gaining an unfair advantage (through the indefinite passage of time) in their attempts to raid the coffers of local governments. These undesirable outcomes will become inevitable should the Ninth Circuit's published opinion be permitted to stand uncorrected.

A. The Court of Appeal Stated But Did Not Apply the Correct Standard of Review

The district court found that tolling was not applicable to the statute of limitations regarding JONES' claims. *Compare* App. at pp. 33a-34a (magistrate judge's finding and recommendation that tolling does not apply), *and* App. at pp. 27a-28a (district court's order adopting magistrate's findings and recommendations in full). Accordingly, the Ninth Circuit properly noted that "[a] district court's decision whether to apply equitable tolling is generally reviewed for abuse of discretion, but where the relevant facts are undisputed, review is de novo." Jones, 393 F.3d at 396, App. at p. 8a (citing Santa Maria v. Pac. Bell, 202 F.3d 1170, 1175 (9th Cir. 2000)). Because the Court of Appeals thereafter expressly utilized the de novo standard, Jones, 393 F.3d at 928 n.6, App. at p. 8a, it must accept the undisputed fact that JONES "received unlimited visits from his legal counsel,"and that he had "broad access" to his attorneys and the court at all times that he was in the Sacramento County Jail.[3]

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[3] On the other hand, if the Ninth Circuit did not accept such facts as undisputed – or if the panel preferred to think that JONES' contact with his attorneys was somehow limited, or that his access to judicial processes was somehow restrained, or that there is some question concerning the number of times JONES visited with his attorneys or visited the court while detained at the Sacramento County Jail – then the abuse-of-discretion standard would have governed the outcome. Under that standard, the Court of Appeal should have refrained from disturbing the district court's decision regarding equitable tolling unless that decision was "clearly against the logic and effect

B. The Analysis in the Published Opinion Overlooks Material Points of Fact and Law

Whatever standard of review is utilized, the district judge did not err in finding that equitable tolling was inapplicable, nor did the district court render a judgment that was contrary to the logic and effect of the facts contained in the record and found by the magistrate judge. In reaching a contrary conclusion and reversing the district court, the Court of Appeals failed to recognize the significance of the undisputed facts and drew unsupported inferences contrary to those facts from the bare circumstance that JONES happened to be a civil detainee during the time that the limitations clock was ticking.

"The purpose of California's equitable tolling doctrine is to soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court." Jones, 393 F.3d at 928, App. at p. 12a (internal quote marks and citations omitted). To apply the doctrine, one must weigh the potential injustice that a plaintiff would suffer by barring his claim against the vital public interest manifested in the statute of limitations. 393 F.3d at 928, App. at p. 12a.

On Petitioners' side of the scale, "[f]airness to the defendant requires that a case be brought when memories have not been affected by time, when all pertinent witnesses can still be called, and when physical evidence has not been destroyed or dispersed . . . [and also] the public has an interest in avoiding the cultivation of stale grievances and grudges." 393 F.3d at 928, App. at p. 12a. On the other side of the scale, the Ninth Circuit placed the would-be "injustice arising from a refusal to toll the statute of limitations . . . for the disability of [JONES'] imprisonment." 393 F.3d at 928, App. at p. 13a. But the Court of Appeals' own notions about the "disability of JONES'

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of the facts as are found." Horphag Research Ltd. v. Pellegrini, 337 F.3d 1036, 1042 (9th Cir. 2003) (tracing the parameters of the abuse-of-discretion standard).

imprisonment" obscured glaring facts in the record that demonstrate, indisputably, that no such disability existed.

The panel's opinion is founded upon the erroneous premise that "the key fact pertaining to the applicability of equitable tolling [is] Jones's civil commitment," Jones, 393 F.3d at 928 n.6, App. at p. 12a– even though the panel acknowledged that the California statute that tolls a statute of limitations period for the disability of imprisonment does not apply to civil detainees such as JONES. 393 F.3d at 927, App. at p. 12a. From there, and ***without citing any evidence***, the panel extrapolated that "civil detainees, like their criminal counterparts, suffer from more limited ability to investigate their claims, to contact lawyers, and to avail themselves of the judicial process." 393 F.3d at 928, App. at p. 13a (internal quotation marks and citation omitted). This notion completely ignores the procedures mandated by the SVPA – particularly §§ 6602 and 6603 of the California Welfare and Institutions Code – which afforded JONES a probable-cause hearing, a trial by jury, and the assistance of court-appointed counsel ("CAC").

Taking its unfounded speculation a step further, the Ninth Circuit surmised that JONES' being "held in the general jail population . . . was thus subject to . . . obstacles to litigation . . . identical to those of a criminal inmate . . . [and that] his 'civil' label did not afford him any greater access to lawyers, legal materials, or the tools of discovery than his criminal cell mates had." Jones, 393 F.3d at 929, App. at p. 14a.

The Court of Appeals ultimately reached the unsubstantiated conclusion that the conditions of confinement faced by sexually violent predators awaiting a civil-commitment trial allows no means by which these individuals may "acquire the legal ammunition necessary to challenge [the conditions of their confinement] before [the] statute of limitations has run." 393 F.3d at 929-30, App. at p. 14a.

These unfounded suppositions are questionable in light of the Ninth Circuit's simultaneous conclusion that JONES failed to proffer any allegation or evidence to support his claim that he was denied

access to the courts. 393 F.3d at 936, App. at p. 16a. Furthermore, these assumptions become completely unsustainable when juxtaposed with the undisputed evidence in the record.

Specifically, JONES received ***unlimited visits from his attorneys*** **and** ***had broad access to his lawyers and the courts*** during the time that he was housed in the Sacramento County Jail. App. at p. 35a, finding number five. In fact, ***JONES' own complaint alleges that he made numerous court appearances*** during the time that he was detained at the Sacramento County Jail. The Inmate Movement History Records, which are part of the record on appeal, reveal that ***he made forty-two court appearances and had twenty-one visits with his attorneys*** between December 16, 1997, and December 13, 1999. The minute orders of the state court, which are also part of the appellate record, corroborate this information. Petitioners did not waive their arguments on this score, but urged them in their appellate brief.

Additionally, the Ninth Circuit failed to take account of important aspects of California law; specifically, "that proceedings under the [SVPA] are ***civil*** in nature . . . [and], unless otherwise indicated on the face of the statute, Rules of Civil Procedure will operate." People v. Superior Court, 87 Cal.App.4th 122, 128, 105 Cal.Rptr.2d 159 (2001) (emphasis added).[4] Accordingly, JONES should have filed a cross-complaint against Appellees in the state court SVPA proceedings insofar as his challenges to the terms of his confinement related to the state's petition, probable-cause hearing and trial to hold and commit him as a sexually violent predator. *See* CAL. CIV. PROC. CODE § 426.30 (mandating that related causes of action be asserted in cross-complaints); Cheiker v. Prudential Ins. Co. of Am., 820 F.2d 334, 336-37 (1987) (analyzing what constitutes a "related cause of action," and holding that California's compulsory cross-complaint statute bars subsequent federal actions that are based upon

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[4] *But see* Bagration v. Superior Court, 110 Cal.App.4th 1677, 1682, 3 Cal.Rptr.3d 292, 295 (2003) (holding that summary judgment is not available in proceedings under the SVPA).

claims related to previous state court actions that could have been raised in that forum); *compare also* Fed. R. Civ. P. 13.

When all is said and done, JONES should have and very well could have consulted with his attorneys and utilized the state court SVPA process to challenge the constitutionality of his confinement in the Sacramento County Jail. Instead of complying with California's laws regarding cross-complaints, JONES delayed until after those proceedings had concluded, and until evidence that may detract from his claims had become unretrievable, before he set about molesting judicial resources and public treasuries.

In view of the fact that he had extensive contact with his attorneys and frequent interaction with the judicial process, but never raised his claims in state court, it is completely erroneous to conclude that JONES had "acted in good faith to pursue his claims, [or that] the balance tips sharply in favor of equitably tolling the statute of limitations." Jones, 393 F.3d 929-30, App. at p. 15a.

C. The Opinion Will Have Undesirable Legal Consequences for Local Governments and for Federal Courts

Beyond the problems presented by factual inaccuracies and unfounded assumptions that form the basis for the published opinion, Petitioners respectfully submit that the Ninth Circuit's holding is unacceptably flawed in a manner that has serious consequences – both for the federal judiciary and for local governments. The opinion places local governments at an unwarranted disadvantage, as they will incur great costs scrambling to find departed witnesses, to locate old documents, to refresh foggy recollections, and to resurrect other dormant evidence to defend against these actions.

Indeed, the Golden State is home to more than 63,000 sex offenders, *see* http://meganslaw.ca.gov, all of whom, as likely recidivists, stand a fair chance of being civilly detained in a local jail and committed to a state hospital under the SVPA. These rapists and pedophiles will have ample time, upon commitment at Atascadero State

Hospital, to plot revenge against those who kept them away from potential victims.

Their vendettas will take the form of challenges to the ancient conditions of their civil confinement, and they will file their vindictive lawsuits almost exclusively in federal courts that are bound by the Ninth Circuit's interpretations of California law. *See* Illeto v. Glock, Inc., 370 F.3d 860, 866 (9th Cir. 2004) (Callahan, J., dissenting from order denying en banc review) ("California state courts are free to disregard the panel's decision, but federal district courts in California are not.").[5]

CONCLUSION

In sum, allowing a sexually violent predator to sit on dubious claims, when he could have raised them in state court proceedings through his court-appointed counsel, is not equitable. Additionally, if not corrected, the Court of Appeals' misguided interpretation of California's equitable-tolling doctrine will only serve to draw undesirable cases such as this to federal courts. Therefore, Petitioners respectfully submit that the Ninth Circuit's published opinion in this case must be reformed in the interests of judicial economy, equity, and justice.

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[5] The notion that state courts might be inclined to disregard the Ninth Circuit's opinion is not far fetched. *See* Venegas v. County of Los Angeles, 32 Cal.4th 820, 862, 11 Cal.Rptr.3d 692, 723 (2004) (Werdegar, J., concurring and dissenting) ("Until this question is resolved, federal district courts in California will be required to follow one rule . . . while California superior courts will be required to follow the opposite rule."). In fact, it would appear that California is not as troubled by the confinement of sexually violent predators. *See* Claire Cooper, Court Rejects Sex Offender's Term Appeal, THE SACRAMENTO BEE, Jan. 27, 2005, at A5 ("The California Supreme Court on Wednesday rejected a sex offender's appeal of a potential life sentence for failing to re-register his address after moving.").

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